

MARKET BULLETIN

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Title	The Iran Threat Reduction and Syria Human Rights Act of 2012
Purpose	To inform the market of the above US legislation which expands US sanctions against Iran in particular and has specific impact on US owned managing agents
Type	Event
From	Andy Wragg, Senior Manager, Lloyd's International Regulatory Affairs Risk Management, North America and General Counsel 020 7327 6387 & Andy.Wragg@lloyds.com
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Legislative Developments

New legislation entitled *The Iran Threat Reduction and Syria Human Rights Act of 2012* ("ITRA") expanding US sanctions on Iran (and Syria) was signed into law on 10 August 2012.

The "core" US embargo of Iran generally prohibits "US persons" from engaging in trade or transactions involving Iran. Most significantly, ITRA expands the application of this "core" embargo to non-US persons that are owned or controlled by US persons. More specifically, ITRA prohibits foreign subsidiaries of US companies from "knowingly engaging in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of Iran" that would be prohibited to a US company under the OFAC regulations. This means that foreign subsidiaries of US companies must comply with OFAC's Iranian Transactions Regulations, and may no longer knowingly deal with other Iranian entities that have been designated by OFAC under other OFAC sanctions programs, (e.g. Iranian banks designated under OFAC's terrorism programs, or IRISL, designated under OFAC's WMD program). OFAC has not yet released any guidance or clarification regarding the scope of the legislation on non US subsidiaries of US persons.

Separately, ITRA amends existing US sanctions targeting Iran, particularly relating to its energy sector, to make it increasingly difficult for non-US companies to engage in business with Iran. ITRA additionally declares sanctionable the provision of underwriting services or (re)insurance to the National Iranian Oil Company ("NIOC") and the National Iranian Tanker

Company (“NITC”). It also codifies sanctions already in place against human rights violators in Syria.

Impact on the Lloyd’s Market

Under the Iran Sanctions Act (“ISA”) as amended by CISADA (see Market Bulletin Y4409), non-US persons can be sanctioned by the US (in a number of ways) for engaging in business with Iran’s energy sector. ITRA expands the types of activities that can lead to a non-US person being sanctioned and it also adds three new potential sanctions to the existing sanctions that can be imposed upon a non-US person for engaging in conduct defined as sanctionable by the ISA. Attached at appendix 1 is a summary of the types of activities that, if engaged in by a non-US company, can expose it to the imposition of sanctions available under ISA.

As noted above, ITRA effectively requires that non-US subsidiaries of US parent companies comply with the Iranian Transaction Regulations (“ITR”) and related regulations. The ITR are wider in scope than EU Regulation 267/2012, which means that managing agents with US parents are now subject to additional (re)insurance prohibitions relating to Iran. However, the exact scope of the legislation and its impact on non-US subsidiaries of US persons remains somewhat unclear. It is our recommendation that independent legal advice is sought for assessing the impact on specific transactions.

Among other things, the ITR prohibit the unlicensed export to Iran of services either from the US or by US Persons. (Re)insurance is considered a service, so US (re)insurers have been prohibited for years from providing unlicensed (re)insurance coverage to Iranian companies or from (re)insuring Iranian risks or losses. This general prohibition will now become applicable to foreign subsidiaries of US companies. With respect to US (re)insurers, older OFAC guidance indicates that they should structure their policies to “exclude risks within the geographical limits of embargoed countries and losses related to prohibited business involving those countries.” With respect to global (re)insurance policies, more recent OFAC FAQs recommend inserting an explicit exclusion for risks that would violate US sanctions laws. We recommend obtaining independent legal advice to determine the best course of action, including the use of any exclusionary language.

Penalties for violations by non-US subsidiaries will be against the US parent company.

The provisions within ITRA which relate to the (re)insurance industry will expand the scope of the ISA, which targets Iran’s energy sector, and allow the imposition of US sanctions against non-US entities (even when they are not owned or controlled by a US entity) that engage in specified activities related to Iran’s energy sector. Of greatest relevance to the Market are the following:

Sanctions can be imposed against persons who knowingly insure or reinsure shipments to or from Iran of goods that could materially contribute to the Government of Iran’s proliferation of weapons of mass destruction (WMD) or support for acts of international terrorism. All US property of a person sanctioned under this section is blocked, effectively making that person a “specially designated national.” (Re)insurers can be sanctioned under

this section only if they issue a policy “knowingly,” which in this context includes reason to know. However, there is no exception under this section for (re)insurers who exercise due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such insurance or reinsurance.

Sanctions can be imposed against persons who provide underwriting, insurance or reinsurance services for a vessel used to transport crude oil from Iran to another country if the person knew or should have known the vessel was used to transport crude oil from Iran. Persons who provide underwriting, insurance or reinsurance services may not be sanctioned under this section if the person exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such services for the transportation of crude oil or refined petroleum products from Iran.

Sanctions can be imposed against persons who knowingly provide underwriting, insurance or reinsurance services for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity. Again, underwriters, insurers and reinsurers benefit from the “due diligence” exception under this section.

Sanctions may be imposed against controlling beneficial owners of a vessel if they had actual knowledge that the vessel was used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, as well as any other person who otherwise owns, operates or controls a vessel that conceals the Iranian origin of crude oil or refined petroleum products transported on it and knew or should have known that the vessel was so used. Persons who knowingly provide underwriting, insurance, or reinsurance services can be sanctioned under this section, but benefit from the “due diligence” exception.

Next steps

Managing agents with US ownership or control should quickly assess any relevant contracts to establish if they could be considered sanctionable under the above, and act accordingly, **seeking independent legal advice where appropriate**. Contractual clauses should also be examined to see if non-performance is enforceable or whether an OFAC licence may be available for the particular transaction.

Due to Lloyd’s direction of 2010, it is expected that managing agents will already be in compliance with the existing ISA provision which declares sanctionable (re)insurance of shipments of refined petroleum products (“RPP”) to Iran, but managing agents need to be aware this provision has been expanded to include the (re)insurance of barter transactions, by which RPP goods are exchanged for other goods. ITRA also declares sanctionable the (re)insurance of voyages transporting crude oil from Iran to another country. While this is new to US law, it is expected that managing agents will already be in compliance due to pre-existing EU restrictions.

Summary

In summary, there are a number of provisions which impact upon the (re)insurance industry. Some of the provisions already fall under EU legislation or Lloyd's Direction regarding RPP, and managing agents will therefore have procedures in place to ensure compliance. Other provisions such as the extension of sanctions to US owned or controlled subsidiaries, may mean that transactions which fall outside of the EU regulations but within US sanctions legislation will need to be terminated for managing agents with US ownership or control, or licenses sought from OFAC to continue the business.

If managing agents wish to discuss this bulletin, please contact:

Andy Wragg on 020 7327 6387 or Andy.Wragg@lloyds.com

Steve Payne on 020 7327 6538 or Stephen.Payne@lloyds.com

Rachael Penny on 020 7327 6380 or Rachael.Penny@lloyds.com

Or

Lloyd's International Trading Advice
Lloyd's Desk, Ground Floor, Underwriting Room
Telephone: +44 (0)20 7327 6677
Email: LITA@Lloyds.com
www.lloyds.com/crystal

APPENDIX 1

The Iran Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”) was signed into law on August 10, 2012. Like CISADA, it amends the Iran Sanctions Act (“ISA”) significantly.

Addition of Three New Potential Sanctions

The ISA as amended by CISADA included the following list of nine potential sanctions:

- (1) Denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned entity;
- (2) Denial of export licenses;
- (3) Denial of U.S. bank loans exceeding \$10 million in one year;
- (4) If the entity is a financial institution, a prohibition on its service as a primary dealer in U.S. Government bonds; and/or a prohibition on its serving as a repository for U.S. Government funds;
- (5) Prohibition on U.S. Government procurement from the entity; and
- (6) Restriction on imports from the entity.
- (7) Prohibition of foreign exchange transactions at or through institutions that are subject to the jurisdiction of the United States;
- (8) Prohibition of banking transactions at or through institutions that are subject to the jurisdiction of the United States; and
- (9) Prohibition of transactions relating to property that is subject to the jurisdiction of the United States.

To the pre-existing list of nine available ISA sanctions, ITRA added the following three:

- (1) Prohibition of U.S. Persons investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;
- (2) Deny visas to and exclude from the U.S. any corporate officer, principal or shareholder with a controlling interest in a sanctioned person; and
- (3) Impose sanctions against the principal executive officer or persons performing similar functions of the sanctioned person.

In addition, ITRA directs that, when imposing sanctions, the President must impose at least five from the newly expanded list of twelve potential sanctions. Previously, the President was required to select at least three sanctions from the list of nine.

Extending the Iranian Transactions Regulations (“ITR”) to Foreign Subsidiaries of U.S. Companies

Section 218 of ITRA effectively extends the U.S. sanctions against Iran to non-U.S. companies that are owned or controlled by U.S. companies (foreign subsidiaries). More specifically, ITRA prohibits foreign subsidiaries of US companies from “knowingly engaging

in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of Iran” that would be prohibited to a US company under the OFAC regulations. This means that foreign subsidiaries of US companies must comply generally with ITR and may no longer knowingly deal with other Iranian entities that have been designated by OFAC under other OFAC sanctions programs, (e.g. Iranian banks designated under OFAC’s terrorism programs, or IRISL, designated under OFAC’s WMD program). Section 218 defines “ownership or control” to mean holding more than fifty percent equity interest or a majority of seats on the board of directors, or to otherwise control the actions, policies, or personnel decisions of the entity.

Under ITRA, if a foreign subsidiary knowingly violates the ITR, it is the U.S. parent company that will be penalized, not the foreign subsidiary. (For these purposes, the term “knowingly” is defined as including “reason to know.”) The penalties that may be imposed are the same as those that would apply if the U.S. parent company had knowingly violated the ITR. The prohibition does not become applicable immediately, however. ITRA provides that the President shall prohibit transactions by foreign subsidiaries within 60 days of the enactment of ITRA, i.e. on or before 9 October 2012. In addition, a U.S. parent will not be penalized if it divests or terminates its business with the foreign subsidiary within 180 days after the enactment of the ITRA.

Shipments of Goods Relating to WMD or Terrorism

ITRA requires that the President block all property in the possession or control of U.S. Persons of non-U.S. Persons who knowingly sell, lease or provide a vessel or provide shipping services or insure or reinsure shipments to or from Iran of goods that could materially contribute to the Government of Iran’s proliferation of weapons of mass destruction (WMD) or support for acts of international terrorism. The President may also block the property of the parent company of the non-U.S. Person who engages in such activity if the parent company knew or should have known that its subsidiary was engaging in such activity. Unlike the other provisions of CISADA and ITRA that explicitly reference insurance, there is no exception for insurers who exercise due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such insurance or reinsurance. Note: The blocking of property authorized under this section of ITRA is different than the sanctions that can be imposed under other sections of ITRA. The blocking of a sanctioned person’s property effectively makes the sanctioned person an SDN. Not only is the U.S. property of the sanctioned person blocked, all U.S. Persons are prohibited from engaging in any dealings with the sanctioned person.

Additional Sanctionable Activities

ITRA also further expands the list of activities which, if undertaken by non-U.S. companies, can expose them to the imposition of sanctions. Thus, under ITRA, the President must impose sanctions against a person if he determines that a person knowingly does any of the following.

Transportation of crude oil from Iran

Sanctions may be imposed against the controlling beneficial owner of a vessel used to transport crude oil from Iran to another country if that person had actual knowledge that the vessel was used to transport crude from Iran to another country, as well as any other

person who otherwise owns, operates, controls or (re)insures such a vessel, and who knew or should have known the vessel was used to transport crude oil to or from Iran. Persons who provide underwriting, insurance or reinsurance services may be sanctioned under this section, but not if the person exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not provide such services for the transportation of crude oil or refined petroleum products from Iran.

Concealment of Iranian origin crude oil and refined petroleum products

Sanctions may be imposed against persons who are controlling beneficial owners of a vessel if they had actual knowledge that the vessel was used in a manner that conceals the Iranian origin of crude oil or refined petroleum products transported on the vessel, as well as any other person who otherwise owns, operates or controls a vessel that conceals the Iranian origin of crude oil or refined petroleum products transported on it and knew or should have known that the vessel was so used. Persons who knowingly provide underwriting, insurance, or reinsurance services can be sanctioned under this section, but benefit from the “due diligence” exception.

Providing underwriting services, insurance or reinsurance services for the National Iranian Oil Company

Knowingly providing underwriting, insurance or reinsurance services for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity. Again, underwriters, insurers and reinsurers benefit from the “due diligence” exception under this section.

Joint Ventures Relating to the Development of Petroleum Resources

Participates in a joint venture, established after 1 January 2002, if either the government of Iran is a substantial partner or investor in the joint venture or Iran could receive technological knowledge or equipment, not previously available to Iran, that could directly and significantly contribute to the enhancement of Iran’s ability to develop petroleum resources.

Support for the Development of Petroleum Resources and Refined Petroleum Products in Iran

Knowingly selling, leasing or providing to Iran goods, services, technology, or support that could directly and significantly contribute to the maintenance or enhancement of Iran’s ability to develop petroleum resources in Iran or its domestic production of refined petroleum resources, provided that the aggregate fair market value of the goods, services, technology or support has a value of \$1 million or more in a given transaction, or \$5 million or more over a twelve month period.

Development and purchase of petrochemical products from Iran

Knowingly selling, leasing or providing to Iran goods, services, technology or support that could directly and significantly contribute to the maintenance or expansion of Iran’s domestic production of petrochemicals, provided that the aggregate fair market value of the goods, services, technology or support has a value of \$250,000 or more in a given transaction, or \$1 million or more over a twelve month period.

Exports, transfers and transshipments

Facilitating the transshipment of goods, services, technology or other items to any other person with knowledge or reason to know that: (1) the export, transfer or transshipment would likely result in another person exporting, transferring, transshipping or otherwise providing the goods, services, or other items to Iran; and (2) the export, transfer, transshipment or provision would materially contribute to the ability of Iran to acquire chemical, biological or nuclear weapons or related technologies, or to acquire or develop destabilizing numbers and types of advanced chemical weapons.

Joint venture relating to the mining, production or transportation of uranium

Knowingly participating in a joint venture established on or after 1 February 2012, if that joint venture involves any activity relating to the mining, production or transportation with the government of Iran or an entity incorporated in Iran or subject to the jurisdiction of the government of Iran. Sanctions may also be imposed against other persons who act on behalf of or at the direction of, or are owned or controlled by one of the aforementioned entities, and through which: (1) uranium is transferred directly or indirectly to Iran; (2) the government of Iran receives significant revenue; or (3) Iran could receive technological knowledge or equipment, not previously available to it, that could contribute materially to its ability to develop nuclear weapons or related technologies.

Purchase, subscription or facilitation of the issuance of Iranian debt

Knowingly purchasing, subscribing to or facilitating the issuance of sovereign debt of the Government of Iran or debt of any entity owned or controlled by the Government of Iran.

Further restrictions on correspondent and payable-through accounts

Under § 104(c) of CISADA, the Treasury Department may prohibit or impose strict conditions on the opening or maintaining of a correspondent or payable-through account in the United States of non-US financial institutions if those non-US financial institutions engage in certain conduct. ITRA expands the list of activities that can lead to the imposition of such sanctions to include the following:

- Facilitating activities of persons subject to UN Security Council Resolutions that impose sanctions on Iran or facilitating the activities of anyone acting on behalf of, at the direction of, or under the ownership or control, of such persons;
- Facilitating the activity of any person who has been named an SDN under OFAC's WMD program; and
- Acting on behalf of, at the direction of, or as an intermediary for or otherwise assisting another person engaged in conduct declared sanctionable by § 104 of CISADA, attempting or conspiring to facilitate or participate in such activity, or being owned or controlled by a non-US financial institution engaged in such activity.

Sanctionable Activities Related to Syria

The concluding title of ITRA authorizes the imposition of sanctions against (i) officials of or persons acting on behalf of the Syrian government who are responsible for serious human rights abuses against Syrians, whether in Syria or elsewhere, (ii) persons who transfer, facilitate the transfer or provide services with respect to goods or technologies that are likely to be used by the Syrian government to commit human rights abuses against the people of Syria, and (iii) persons that have engaged in censorship that prohibits, limits or penalizes the exercise of freedom of expression by Syrian citizens.